UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION

ROAD HOG TRUCKING, LLC, a Texas	§	
Limited Liability Company, JARED BERG	§	
and EMILY BERG, Individuals,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	CASE NO. 2:15-CV-258-J
	§	
HILMAR CHEESE CO., INC., a California	§	
Corporation, CDF DAIRY, a California	§	
partnership, DAVID AHLEM,	§	
RICHARD "DICK" CLAUSS and	§	
C.A. RUSSELL, individuals,	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

PLAINTIFFS FILING OF THEIR SECOND AMENDED COMPLAINT WITH THE DEFENDANTS CONSENT PURSUANT TO F.R.C.P. RULE 15(a)(2)

COME NOW, the Plaintiffs and file this Second Amended Complaint, with the Consent of the Defendants, and would show the Court the following:

I.

BACKGROUND

- 1.01 Plaintiffs filed their Original Complaint on August 19, 2015 (Dkt. 1).
- 1.02 The defendants executed appropriate "Waivers of Service of Summons" on September 3, 2015 (Dkt. 5).
- 1.03 Plaintiffs thereafter filed their First Amended Complaint before any answer was filed to correct certain errors, including the mis-identity of CDF Dairy originally thought to be an LLC but the parties were informed by the defendants that it was a California partnership.

- 1.04 In the interim counsel for the Plaintiffs and the defendants have been discussing the allegations, the facts and the defendants proposed Motion to Dismiss. In the interest of judicial economy and based upon certain sworn representations, the Plaintiffs have agreed to amend the Complaint to reflect certain agreements to streamline the litigation without Court involvement, specifically:
 - 1) the dropping of named defendants Charles Ahlem and James Ahlem, without prejudice and without the necessity of a motion by the Defendants; and
- 2) the dropping of the prior Count V. as it relates to Section 8 of the Clayton Act.

 The counsel for the Defendants <u>consent</u> to said filing per our conference on October 19, 2015.

II.

RELIEF SOUGHT

2.01 Plaintiffs and with the Defendants consent in accord with F.R.C.P. 15(a)(2), file their Second Amended Complaint herewith prior to the Defendants' Answer.

WHEREFORE, premises considered, Plaintiffs herewith file their Second Amended Complaint with the Defendants consent.

Respectfully submitted,

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BY: <u>/s/ Philip R. Russ</u> Philip R. Russ Bar No. 17406000

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 20^{th} day of October, 2015, I electronically filed the foregoing document with the Clerk of the Court for the Northern District of Texas, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participant:

Eric Grant, Esq. Hicks Thomas LLP 700 Louisiana Street, Suite 2000 Houston, Texas 77002 grant@hicks-thomas.com

> BY: <u>/s/ Philip R. Russ</u> PHILIP R. RUSS